



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

DIGEST OF RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

PETERSBURG GAS CO. *v.* CITY OF PETERSBURG et al.

Feb. 2, 1922.

[110 S. E. 533.]

1. Public Service Commissions (§ 31*)—Should Certify Facts Found as Well as Evidence.—Under Const. 1902, § 156 (f), requiring the Corporation Commission to certify to the appellate court all facts upon which the action appealed from was based, together with such of the evidence as may be selected by the Commission or the parties, the Commission is required to certify the facts, and not merely the evidence.

2. Eminent Domain (§ 2 (1)*)—Requirement to Furnish Gas for Less than Reasonable Compensation Is Illegal.—A requirement that a gas company furnish gas to its customers for less than a reasonable compensation is illegal, under both the state and federal Constitutions, forbidding the taking of private property for public use without just compensation, and under the common law, forbidding the taking of private property of one person and giving it to another with or without just compensation.

3. Public Service Commission (§ 7*)—Utility Is Entitled to Return on Reasonable Value of Property Used.—A utility company is entitled to a fair and reasonable return upon the value of its property appropriated to the public use, and not upon the stock it has issued or the debts it may owe.

4. Public Service Commissions (§ 7*)—Rate of Return Should Be Sufficient to Make Securities Attractive to Investors.—The rate of return allowed a public utility company upon the value of its property devoted to public use should be sufficient to make its securities attractive to investors under all the circumstances of the case.

5. Public Service Commissions (§ 7*)—Should Ascertain Fair Valuation and Reasonable Return Above Operating Expenses and Divide Total among Consumers.—In determining the rate to which a public utility, whose plant is not larger than necessary for the public service, is entitled, the Commission should first ascertain the fair value of the property of the company used or useful in its business, should fix the rate of return which the company is entitled to receive on such valuation above its proper operating expenses, and should then determine the amount to be paid by consumers to pay the expenses and the ascertained return.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and indexes.

6. Public Service Commissions (§ 7*)—Cost of Reproduction Less Observed Depreciation Is Fairest Valuation Method.—As a general rule, the cost of reproduction of the utility less the observed depreciation is the fairest method of determining the value of the property for rate-making purposes, where the utility has not been allowed to earn in the past a depreciation reserve greater than the observed depreciation.

7. Public Service Commissions (§ 7*)—Valuation of Real Estate Is Not Subject to Reduction.—Valuation of the real estate used or useful in the business of a company devoted to public use is not subject to any reductions in determining the value for rate fixing.

8. Public Service Commissions (§ 33*)—No Presumption Findings Were Correct without Required Statement of Facts.—Where the Corporation Commission did not submit to the court the statement of the facts required by the constitution, it is not presumed prima facie that the findings of the Commission are correct.

9. Public Service Commissions (§ 7*)—Prewar Unit of Prices Not to Be Taken in Determining Reproduction Cost.—In determining the reproduction cost of utility to be used as a basis for fixing the rates, the prewar unit of cost prices is not to be adopted, in view of the known fact that prices have not returned to the prewar level, and especially where the Commission found there was no probability of such return.

10. Public Service Commissions (§ 7*)—"Value" for Rate Making Is Amount on Which Utility Is Entitled to Return.—The word "value" has a peculiar meaning in determining the basis on which a public service company is entitled to return, and means only the amount upon which returns should be computed, not the value of the property as an income-producing instrumentality nor the price at which it would sell.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Value.]

11. Public Service Commissions (§ 7*)—No Rule Can Be Fixed for Determining Value.—No hard and fast rule can be safely laid down for fixing the value of a public utility for rate-making purposes.

12. Gas (§ 14 (1)*)—Rate Fixed by Commission Held Not to Permit Fair Return.—A rate fixed by the Corporation Commission for a gas company which would yield only 5 to 9 cents per thousand cubic feet above the undisputed operating expenses, is insufficient to yield a fair return to the utility, where the Commission found its value to exceed \$350,000, and the consumption was about 100,000,000 cubic feet per year.

13. Public Service Commissions (§ 7*)—Loss Subsequent to Establishment of Confiscatory Rate Should Be Amortized.—Though a

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

public utility company is not entitled to relief for losses sustained by it before it applied to the Corporation Commission for increased rates, it is entitled to have amortized losses incurred by it in consequence of a rate fixed by the Commission which was too low.

14. Public Service Commissions (§ 7*)—Tax on Profits Allowed Should Be Considered.—If in any rate fixed a public utility company should make a profit upon which a tax is imposed, that should be considered in fixing the percentage of return it is entitled to receive on its investment.

Appeal from State Corporation Commission.

Proceedings by the Petersburg Gas Company before the State Corporation Commission for an increase in gas rates, opposed by the City of Petersburg and others. From a decision granting an increase smaller than asked for, the Company appeals. Reversed and remanded to Commission, with directions.

Mann & Townsend, of Petersburg, for plaintiff in error.

R. B. Willcox and *Chas. Hall Davis*, both of Petersburg, for defendant in error.

WILLIAMS v. MARINE BANK OF NORFOLK.

March 16, 1922, April 5, 1922.

[111 S. E. 94.]

1. Contracts (§ 189*)—Promise to "Settle" Contract with Bank Held Not Unconditional Promise to Pay Contract Price.—A promise by an owner, indorsed on a contract for the construction of a house, to "settle the above contract" with a bank, which was a transfer by the contractor of the owner's obligation, does not unconditionally promise to pay the full amount of the contract price to the bank, since the meaning of the word "settle" depends on the context in which it is used and upon the subject-matter and the circumstances surrounding its use.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Settle—Settlement. For other cases, see 3 Va.-W. Va. Enc. Dig. 303.

2. Contracts (§ 189*)—Owner Held Required to Pay Bank, on Assignment of Contract, Only Amount Due Contractor after Potential Liens Were Discharged.—A promise, indorsed by an owner on the contract for construction of buildings, to settle the contract with the bank which advanced money to the contractor, requires the owner to pay the bank only the amount due contractor after potential liens

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.